

Appl. No. 10/737,306
Docket No. 9134R2
Amdt. dated April 26, 2007
Reply to Office Action mailed on January 26, 2007
Customer No. 27752

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REMARKS

Claim Status

Claims 1-27 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 1-27 were rejected under 35 U.S.C. § 112, second paragraph. The Office Action states "[c]laim is considered indefinite since it unclear the structure of the second region of the fibrous web [sic]." The Applicants submit that Claims 1-27 are definite with respect to the structure of the second region of the fibrous web. As stated in Claims 1, 11, 17, and 21, the fibrous web (1) has a first region (2). The fibrous web (1) has at least one discrete integral second region (4). The discontinuity (16) is in the second region (4) which is integral with the fibrous web (1). The deformation (6) is in the second region (4) and is comprised of a plurality of tufted fibers integral with but extending from the first region (2). The first region (2) and second region (4) are related to one another as being common to the fibrous web (1). Thus, all the elements are spatially related and the Applicant submits that Claims 1, 11, 17, and 21 are allowable. Claims 2-10, 12-16, 18-20, 22, and 23 are also allowable as the claims depend upon an allowable independent claim.

The Office Action presents no cognizable argument under 35 U.S.C. § 112, Second Paragraph, against Claims 24, 26, and 27. Further, Claims 24 and 26 do not describe a discontinuity. As understood by the Applicants, the Office Action's argument is related to the discontinuity, as claimed in Claims 1-23. Therefore, the Applicants submit that Claims 24, 26, and 27 are allowable. The Applicants further submit that Claims 25 and 26 are also allowable because they depend upon Claim 24.

In regard to Claim 11, the Office Action states that "[i]t is unclear how the second part of the description, "nor extending from the first region" further defines the fibers which are not integral with the first region." The Applicants submit that Claim 11 is definite. The specification at Page 15, Line 21 to Page 17, Line 10, describes the subject matter of Claim 11 and refers to FIGS. 12 and 14 for a photographs illustrative of the claimed subject matter, showing fibers neither integral with nor extending from the first

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precursor web. The Applicants submit that one of ordinary skill in the art is apprised of the scope of Claim 11 thereby serving the notice function required by 35 U.S.C. § 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent, as required by *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). The Applicants respectfully request that Claim 11 be allowed. The Applicants submit Claims 12-16 are also allowable because the claims depend upon Claim 11.

Rejection Under 35 U.S.C. § 102 Over Provost and Shepard

Claims 1 and 17 and Claims Dependent Thereon

The Applicants submit that Claims 1 and 17 are patentable over Provost and Shepard (US 2004/0157036), referred to herein as Provost, under 35 U.S.C. §102(e), for two reasons: (1) Provost is not an enabling disclosure of Claims 1 and 17 of the present application and (2) Provost does not disclose every element of Claims 1 and 17 of the present application.

First, The portions of Provost cited in the Office Action do not appear to enable Claims 1 and 17 of the present application. To be prior art under section 102(b), the reference must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure. *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed.Cir. 1985); *In re LeGrice*, 49 C.C.P.A. 1124, 301 F.2d 929, 936, 133 USPQ 365, 371 (1962). In Provost, a batt 10 of fibers 12 is needle punched through a carrier film 14. The portions of Provost cited in the Final Office Action do not appear to disclose that the structure of the batt 10 of fibers 12 illustrated in Figs. 2D, 3D, 4, 7, 8, and 11 can be achieved without the carrier film 14. The carrier film 14 appears to provide constriction of the fibers 12 needle punched through the film hole 38 to form the trunk 42 of the loops 40. Figs. 2D, 3D, 4, 7, 8, and 11 of Provost all illustrate the looped fiber structure in conjunction with the carrier film 14. In the present application, Claims 1 and 17 are for a structure that can be achieved on a fibrous web alone which does not require a film carrier to form, maintain, or be a part of the claimed structure. Therefore, Provost does not appear to enable Claims 1 and 17 of the present application and is not prior art against Claims 1 and 17 of the present application.

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Second, the portions of Provost cited in the Office Action, also do not disclose each and every element of Claims 1 and 17 of the present application. The portions of Provost cited in the Office Action do not appear to disclose a fibrous web having a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane. The needle punched web of Provost is comprised of a carrier film 14 and batt 10 of fibers 12. Provost, Paragraph [0093] and Figure 1. In Provost, the batt 10 of fibers 12 is needle punched through the carrier film 14. Figure 2D of Provost shows a final structure of the batt 10 of fibers 12 and their relationship to the carrier film 14. As shown in Fig. 2D of Provost, the fibers 12 form loops protruding through the carrier film 14. Paragraph [0099] of Provost describes the loops as being "a plurality of individual loops 40 extending from a common trunk 42 trapped in film hole 38." Paragraph [0007] of Provost describes the forked needle 34 that creates the hole as having a diameter of 35 gauge or smaller. Thus, the needle 34 has a circular cross section orthogonal to the length of the needle above the forked portion of the needle. Other needle diameters are disclosed in Paragraphs [0038] and [0039] of Provost.

As shown in Fig. 2C of Provost, at one stage in formation of the looped web, the needle penetrates the carrier film 14 such that the entire forked portion of the needle is driven through the carrier film 14. Provost, Paragraph [0097], describes the carrier film 14 as having a thickness of about 0.05 mm. Provost, Paragraph [0099] describes the needle as having a total penetration depth "DP" between 2 and 5 mm. Cross sections shown in Figs. 2C and 2D of Provost show that the hole in the carrier film 14 bounds the entire circumference of the needle 34 as the needle is punched through the film carrier. Since the needle 34 has a circular cross section, the hole 38 in the film carrier should also be circular. Thus, each trunk 42 should have a circular cross section as the web material comprising the trunk 42 protrudes through a circular hole 38 (as measured in a plane parallel to the plane of the unaltered web). Referring to Fig. 2D of Provost, in which the batt 10 of fibers 12 and the carrier film 14 are illustrated in cross section, the batt 10 of fibers 12 when viewed from the side of the structure presenting batt 10 of fibers 12 to the observer, the batt 10 of fibers 12 would appear to be essentially flat with discrete approximately conical or curved conical depressions (i.e. the periphery of the depression

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taken at any section parallel to the batt 10 of fibers 12 would be circular) where the fibers 12 are thrust through the circular hole 38 in the carrier film 14.

The conical or curved conical depressions of Provost do not exhibit a linear orientation defining a longitudinal axis (L) in the MD-CD plane, as claimed in Claims 1 and 17 of the present application. If the conical or curved conical depressions of Provost are considered to be the discontinuities claimed in the present application (a single "discontinuity" is claimed in Claims 1 and 17 of the present application), the conical or curved conical depressions do not exhibit linear orientation in the MD-CD plane. Rather, each conical or curved conical depression is essentially symmetric in the MD-CD plane.

A conical or curved conical depression, when viewed from above, presents a circle. Circular depressions do not have a linear orientation defining a longitudinal axis in the MD-CD plane, as in Claims 1 and 17 of the present application. A circle does not have a linear orientation because all points about the circumference of a circle are equidistant from the center of the circle. A circle, when viewed from above, has no orientation in any in-plane direction because a circle is symmetric. It is impossible to properly describe a circle as having a linear orientation in the plane of the circle. A circle cannot define a longitudinal axis in the MD-CD plane because a circle is symmetric. It is impossible to look at a circle and properly state that the circle defines a longitudinal axis in the plane of the circle. A circle cannot define a longitudinal axis in the plane of the circle because there is nothing particularly defining about the in-plane geometry of a circle. Therefore, the circular depression in Provost cannot be the discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane, as in Claims 1 and 17 of the present application.

Paragraph [0105] of Provost states that "[p]referably there is sufficient distance between adjacent structures so as to enable good penetration of the field of formations by a field of mating male fastener elements." As shown in Figs. 7 and 11 of Provost, each trunk 42 and corresponding loops 40 are spaced apart from other trunks 42 and loops 40. Thus, each conical or curved conical depression is spaced apart from the others. Therefore, adjacent conical or curved conical depressions also do not exhibit a linear orientation defining a longitudinal axis (L) in the MD-CD plane, as Claims 1 and 17 of the present application. Thus, Provost, as cited in the Office Action, does not appear to

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disclose a fibrous web having a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane.

In the Response to Arguments section of the Office Action, Page 7, Lines 20-22, the Office Action refers to "the change in the fiber positioning of the batt caused by needlepunching through the batt and forming the tuft or deformation region would correspond to a discontinuity within the fibrous batt." Based upon this statement, the Applicants believe that the Office Action is referring to the tuft as the deformation and is also referring to the tuft as the discontinuity. As claimed in Claims 1 and 17, the deformation and discontinuity are two different elements. Applicants respectfully submit that the change in fiber positioning referred to in the Office Action cannot be both the discontinuity and the deformation, as claimed in Claims 1 and 17 of the present application. Thus, the Applicant submits that the Response to Arguments section of the Office Action also does not identify each and every element of Claims 1 and 17 of the present application.

Based on the above arguments, the Applicants submit that Claims 1 and 17 are allowable over Provost. The Applicants respectfully request that the rejections of Claims 1 and 17, under 35 U.S.C. § 102(e), over Provost, be withdrawn.

Because Claims 2-5 and 8-10 depend upon Claim 1 and Claims 18-20 depend upon Claim 17, the Applicants submit that Claims 2-5, 8-10, and 18-20 are also allowable over Provost. The Applicants respectfully request that the rejections of Claims 2-5, 8-10, and 18-20, under 35 U.S.C. § 102(e), over Provost, be withdrawn.

Claim 21 and Dependent Claim 23

The Applicants submit that Claim 21 is patentable over Provost, under 35 U.S.C. §102(e), because Provost, as cited in the Office Action, does not disclose every element of Claim 21. As discussed above with respect to Claims 1 and 17, the portions of Provost cited in the Office Action do not appear to disclose a fibrous web having a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane and at least another portion being a deformation comprising a plurality of tufted fibers, as claimed in Claim 21 of the present application. Furthermore, the Applicants submit that the Response to Arguments section of the Office Action also fails to identify each and

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every element of the Claim 21 because the change in fiber positioning referred to in the Office Action cannot be both the discontinuity and the tuft, as in Claim 21.

Based on the above, the Applicants submit that the Office Action fails to show that Provost discloses each and every element of Claim 21. The Applicants respectfully request that the rejection of Claim 21, under 35 U.S.C. § 102(e), be withdrawn. Because Claim 23 depends upon Claim 21, the Applicants submit that Claim 23 is also allowable over Provost. The Applicants respectfully request that the rejection of Claim 23, under 35 U.S.C. § 102(e), be withdrawn.

Claim 24 and Claims Dependent Thereon

The Applicants submit that Claim 24 is patentable over Provost under 35 U.S.C. § 102(e) because Provost, as cited in the Office Action, does not disclose every element of Claim 24. Claim 24 of the present application claims "a plurality of discrete regions of fiber reorientation at least on said first surface, each said discrete region having a linear orientation defining a longitudinal axis in said MD-CD plane." The discrete regions (or loops 40) in Provost do not have a linear orientation defining a longitudinal axis in the MD-CD plane. As discussed above, with respect to Claims 1 and 17, each trunk 42 has a circular cross section because the web material comprising the trunk protrudes through a circular hole 38. Figures 2D, 3D, 4, 7, 8, and 11 of Provost illustrate the structure of the web in profile. The loops 40 of Provost do not have a linear orientation defining a longitudinal axis in the MD-CD plane. Rather, the loops 40 appear to look like trees or bushes extending from the trunk 42 and are symmetric in the MD-CD plane of the structure in Provost. As discussed above, in regard to the rejections of Claims 1 and 17 over Provost, the Applicants submit that a circular discrete region does not have a linear orientation defining a longitudinal axis in the MD-CD plane.

Furthermore, as discussed above with respect to the rejections of Claims 1 and 17 over Provost and illustrated in Figure 11 of Provost, each set of loops 40 extending from each trunk 42 is spaced apart from the other. Therefore, loops 40 do not exhibit a linear orientation defining a longitudinal axis (L) in the MD-CD plane, as claimed in the present application.

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Furthermore, the portions of Provost cited do not appear to enable Claim 24 of the present application. Claim 24 is to a structure that can be achieved on a fibrous web alone which does not require a carrier to form, maintain, or be a part of the claimed structure. As discussed above, Provost appears to require a carrier layer. Therefore, Provost does not appear to enable Claim 24 of the present application and is not prior art against Claim 24, under 35 U.S.C. § 102.

For the reasons set forth above, the Applicants submit that Claim 24 is allowable over Provost. The Applicants respectfully request that the rejection of Claim 24, under 35 U.S.C. § 102(e), be withdrawn. Because Claims 25 and 26 depend upon Claim 24, the Applicants submit that Claims 25 and 26 are also allowable over Provost. The Applicants respectfully request that the rejections of Claims 25 and 26, under 35 U.S.C. § 102(e), be withdrawn.

Rejection Under 35 U.S.C. § 102 Over Sorimachi et al.

Claims 1 and 17 and Claims Dependent Thereon

Claims 1 and 17 were rejected, under 35 U.S.C. § 102(b), over Sorimachi et al. (US 5,508,080). The Applicants submit that Claims 1 and 17 are patentable, over Sorimachi et al., as cited in the Office Action, under 35 U.S.C. § 102(b), for two reasons: (1) Sorimachi et al. is not an enabling disclosure of Claims 1 and 17 of the present application and (2) Sorimachi et al. does not disclose every element of Claims 1 and 17 of the present application.

First, the portions of Sorimachi et al. cited in the Office Action dated February 3, 2006, do not appear to enable Claims 1 and 17 of the present application. In Sorimachi et al., a fibrous web 22 is needle punched through a nonwoven fabric sheet 23. Sorimachi et al., Fig. 3 and Column 3, Lines 52-56. The portions of Sorimachi et al. cited in the Office Action do not appear to disclose that the structure of fibrous web 22 can be achieved without the nonwoven fabric sheet 23. The nonwoven fabric sheet 23 provides support of the fibers needle punched through the nonwoven fabric sheet 23. In the present application, Claims 1 and 17 are for a structure that can be achieved on a fibrous web alone which does not require a film carrier to form, maintain, or be a part of the claimed structure. Therefore, Sorimachi et al. does not enable Claims 1 and 17 of the present

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application. As discussed above, in regard to the rejections of Claims 1 and 17 over Provost, for a reference to be prior art under section 102(b), the reference must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure. Thus, the Applicants submit that Sorimachi et al., as cited, is not prior art against Claims 1 and 17 of the present application.

Second, the portions of Sorimachi et al. cited in the Office Action dated October 27, 2006, also do not appear to disclose every element of Claims 1 and 17 of the present application. The portions of Sorimachi et al. cited do not appear to disclose a fibrous web having a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane. The fibrous web 22 of Sorimachi et al. is illustrated as being a thick batt of fibers. None of the Figures, nor the portions of Sorimachi et al. cited in the Office Action, disclose that the fibrous web 22 has a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane, as in Claims 1 and 17. The Response to Arguments section of the Office Action dated January 26, 2007, Page 8, Lines 1-5, states that Sorimachi et al. would have a hole or gap in the second layer where the tuft region punches through the upper layer. The Applicants are uncertain as to what structure in Sorimachi et al. the Office Action is referring because the Office Action does not identify the structures with specificity such as element numbers or complete description of the layers to which are being referred. Thus, the Office Action has not shown that Sorimachi et al. teaches each and every element of Claims 1 and 17.

In the Response to Arguments section of the Office Action, Page 7, Lines 20-22, the Office Action refers to "the change in the fiber positioning of the batt caused by needlepunching through the batt and forming the tuft or deformation region would correspond to a discontinuity within the fibrous batt." As discussed above in the section related to the rejections of Claims 1 and 17 over Provost, the Applicants respectfully submit that the change in fiber positioning referred to in the Office Action cannot be both the discontinuity and the tuft as claimed in Claims 1 and 17 of the present application. Thus, the Applicant submits that the Response to Arguments section of the Office Action also does not identify each and every element of Claims 1 and 17 of the present application in Sorimachi et al.

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Based on the above, the Applicants submit that Claims 1 and 17 are allowable over Sorimachi et al. The Applicants respectfully request that the rejection of Claims 1 and 17, under 35 U.S.C. § 102(b), over Sorimachi et al., be withdrawn.

Because Claims 2-6, 8, and 10 depend upon Claim 1 and Claims 18-20 depend upon Claim 17, the Applicants submit that Claims 2-6, 8, 10, and 18-20 are also allowable over Sorimachi et al. The Applicants respectfully request that the rejections of Claims 2-6, 8, 10, and 18-20, under 35 U.S.C. § 102(b), over Sorimachi et al. be withdrawn.

Claim 21 and Claims Dependent Thereon

The Applicants submit that Claim 21 is patentable over Sorimachi et al., under 35 U.S.C. § 102(b), because Sorimachi et al. does not disclose every element of Claim 21. As discussed above with respect to Claims 1 and 17 and Sorimachi et al., the portions of Sorimachi et al. cited in the Final Office Action do not appear to disclose fibrous web having a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane. Furthermore, the Applicants submit that the Response to Arguments section of the Office Action also fails to identify each and every element of the Claim 21 because the change in fiber positioning referred to in the Office Action cannot be both the discontinuity and the tuft, as in Claim 21 (see discussion above related to rejections of Claims 1 and 17 over Provost).

The Applicants respectfully request that the rejection of Claim 21, under 35 U.S.C. § 102(b), be withdrawn. Because Claims 22 and 23 depend upon Claim 21, the Applicants submit that Claims 22 and 23 are also allowable over Sorimachi et al. The Applicants respectfully request that the rejection of Claims 22 and 23, under 35 U.S.C. § 102(b), be withdrawn.

Claim 24 and Claims Dependent Thereon

The Applicants submit that Claim 24 is patentable over Sorimachi et al., as cited in the Office Action dated October 17, 2006, under 35 U.S.C. § 102(b), because Sorimachi et al. does not disclose every element of Claim 24. Claim 24 of the present application claims "a plurality of discrete regions of fiber reorientation at least on said first surface, each said discrete region having a linear orientation defining a longitudinal axis in said

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MD-CD plane.” The discrete regions (protrusions 22a) in Sorimachi et al. do not have a linear orientation defining a longitudinal axis in the MD-CD plane.

Sorimachi et al., Column 4, Lines 32-37, states that needles used to create the structure have a diameter. Therefore, the needles in Sorimachi et al. have a circular cross section orthogonal to the length of the needle. As shown in Fig. 3 and described at Column 5, Lines 58-60, of Sorimachi et al., “part of the fibrous web 22 penetrates through the nonwoven fabric sheet 23 and forms protrusions 22a thereon.” Since the needles in Sorimachi et al. are circular, the protrusions 22a should have a circular cross section when viewed from the side of the structure presenting the nonwoven fabric sheet 23 to the observer. Figures 3, 4, 6, 7, 8A, and 9A-C illustrate the structure of the Sorimachi et al. in profile. The protrusions 22a of Sorimachi et al. do not have a linear orientation defining a longitudinal axis in said MD-CD plane. Rather, each protrusion 22a appears to look like a bump with each bump being symmetric in the MD-CD plane. The cross section illustrated in Fig. 3 (and other figures in Sorimachi et al.) show that each protrusion 22a has the same cross section and the protrusions are spaced apart from one another. As discussed above, in regard to the rejections of Claims 1 and 11 over Provost, the Applicants submit that a circular discrete region does not have a linear orientation defining a longitudinal axis in the MD-CD plane. Therefore, protrusions 22a in Sorimachi et al. do not exhibit a linear orientation defining a longitudinal axis (L) in the MD-CD plane, as claimed in Claim 24 of the present application.

Furthermore, the portions of Sorimachi et al. cited do not appear to enable Claim 24 of the present application. Claim 24 is to a structure that can be achieved on a fibrous web alone which does not require a carrier to form, maintain, or be a part of the claimed structure. As discussed above, Sorimachi et al. appears to require a carrier layer. Therefore, Sorimachi et al. does not enable Claim 24 of the present application and is not prior art against Sorimachi et al., under 35 U.S.C. § 102.

For the reasons set forth above, the Applicants submit that Claim 24 is allowable over Sorimachi et al. The Applicants respectfully request that the rejection of Claim 24 under 35 U.S.C. § 102(b) be withdrawn. Because Claims 25 and 26 depend upon Claim 24, the Applicants submit that Claims 25 and 26 are also allowable over Sorimachi et al. The Applicants respectfully request that the rejections of Claims 25 and 26, under 35 U.S.C. § 102(b), be withdrawn.

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Claim 27

The Applicants submit that Claim 27 is patentable over Sorimachi et al., as cited in the Final Office Action, under 35 U.S.C. § 102(b), because the portions of Sorimachi et al. cited in the Office Action do not disclose every element of Claim 27. Claim 27 relates to an absorbent article comprising a topsheet, a backsheet, and an absorbent core disposed between the topsheet and the backsheet. Sorimachi et al. discloses a flexible laminated surface material for vehicle interiors and building interiors and does not disclose a topsheet, backsheet, and an absorbent core disposed between the topsheet and the backsheet.

Furthermore, as discussed with respect to Claim 24 and Sorimachi et al., the portions of Sorimachi et al. cited in the Office Action do not disclose "a plurality of discrete regions of fiber reorientation at least on said first surface, each said discrete region having a linear orientation defining a longitudinal axis in said MD-CD plane."

For the reasons set forth above, the Applicants submit that Claim 27 is allowable over Sorimachi et al. The Applicants respectfully request that the rejection of Claim 27, under 35 U.S.C. § 102(b), be withdrawn.

Rejection Under 35 U.S.C. § 102 Over Hansson.

Claims 1, 17, 21, and Claims Dependent Thereon

Claims 1, 17 and 21 were rejected, under 35 U.S.C. § 102(b), over Hansson (US 6,048,600). The Applicants submit that Claims 1, 17, and 21 are patentable over Hansson, as cited in the Final Office Action, under 35 U.S.C. § 102(b), for two reasons: (1) Hansson is not an enabling disclosure of Claims 1, 17, and 21 of the present application and (2) Hansson does not disclose every element of Claims 1, 17, and 21 of the present application.

First, the portions of Hansson cited in the Office Action dated January 26, 2007, do not appear to enable Claims 1, 17, and 21 of the present application. In Hansson, the corrugated second layer (5) is shown to be attached to the first layer (2). Column 5, Lines 11-12 state that the corrugated layer is not deformed plastically. Thus, the corrugated layer would not maintain its corrugated shape without the first layer (2). Claims 1, 17,

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and 21 are for a structure that can be achieved on a fibrous web alone which does not require a carrier (i.e. second layer 5) to form, maintain, or be a part of the claimed structure. Therefore, Hansson does not appear to enable Claims 1, 17, and 21, of the present application and is not prior art against Claims 1, 17, and 21, under 35 U.S.C. § 102.

Second, Hansson, as cited, does not disclose each and every element of Claims 1, 17, and 21. Claims 1, 17, and 21 are to a deformation comprising a plurality of tufted fibers. The Office Action refers to the crests (3) as the deformation. The crests (3) in Hansson, as cited, are not comprised of a plurality of tufted fibers, as claimed in Claims 1, 17, and 21 of the present application. Therefore, the Applicants submit that Claims 1, 17, and 21 are allowable over Hansson.

For the reasons set forth above, the Applicants submit that Claims 1, 17, and 21 are allowable over Hansson. The Applicant further submits that Claims 2, 3, 9, 10, and 18-20 are also allowable as they are dependent upon an allowable independent claim.

Claim 24 and Claims Dependent Thereon

Claim 24 is to an absorbent core. Hansson is a "liquid-permeable casing sheet", as stated in the Abstract. Furthermore, the Office Action does not identify any disclosure in Hansson for a discrete region having a linear orientation defining a longitudinal axis in the MD-CD plane and comprising a plurality of fibers having portions reoriented in a direction substantially orthogonal to the MD-CD plane. Thus, Hansson, as cited, does not teach each and every element of Claim 24 of the present application.

Based on the above, the Applicants submit that Claim 24 is allowable over Hansson and respectfully request that Claim 24 be allowed. The Applicants further submit that Claims 25 and 26 are also allowable over Hansson because they are dependent upon Claim 24. The Applicants respectfully request that Claims 25 and 26 be allowed.

Rejection Under 35 U.S.C. § 103(a) Over Sorimachi et al. in view of Kotek et al.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sorimachi et al. (US 5,508,080) in view of Kotek et al. (US 6,120,718). The Applicants

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submit that Claim 7 is patentable over Sorimachi et al. in view of Kotek et al., as cited in the Final Office Action, because the references, when combined, fail to teach or suggest each and every element of Claim 7 of the present application. Claim 7 depends upon Claim 1. As discussed above with respect to Claim 1 and Sorimachi et al. under 35 U.S.C. 102(b), Sorimachi et al. fails to teach or suggest that the fibrous web 22 has a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane. Kotek et al. also does not teach or suggest that the fibrous web 22 has a discontinuity exhibiting a linear orientation and defining a longitudinal axis in the MD-CD plane. Therefore, Sorimachi et al. in view of Kotek et al., fails to teach or suggest each and every element of Claim 7 of the present application.

The Applicants submit that Claim 7 is patentable over Sorimachi et al. in view of Kotek et al. The Applicants respectfully request that the rejection of Claim 7, under 35 U.S.C. § 103(a), be withdrawn.

Rejection Under 35 U.S.C. § 103(a) Over Hansson

Claims 4-8, 22, and 23 were rejected, under 35 U.S.C. § 103(a), as being unpatentable over Hansson (US 6,048,600). The Applicants respectfully traverse the rejection for two reasons. First, Claims 4-8 depend upon Claim 1. As discussed above, the Applicants submit Claim 1 is allowable. Therefore Claims 4-8 are also allowable. Claims 22 and 23 depend upon Claim 21. As discussed above, the Applicants submit Claim 21 is allowable. Therefore Claims 22 and 23 are also allowable.

Second, the Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness against Claims 4-8, 22, and 23.

In regard to Claims 4, 6, 7, and 22, the Office Action states that it would have been obvious to one having ordinary skill in the art to choose bicomponent fibers (Claim 6) or non-round fibers (Claim 7) depending on the end-use of the product and the properties required for the end-use. The Office Action further states that randomly oriented fibers (Claims 4 and 22) would be chosen by one of ordinary skill in the art. The Office Action asserts, without providing any evidentiary basis, reasons one skilled in the art would make such choices. Under *In re Zurko*, 258, F.3d at 1386, 59 USPQ 2d at 1697, it is never appropriate to rely solely on common knowledge in the art without

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evidentiary support in the record as the principal evidence upon which a rejection was based. The Applicants submit that the Office Action's statements are made without evidentiary support in the record. Therefore, the Applicants submit that the statements in the Office Action do not provide a proper basis for establishing a *prima facie* case of obviousness against Claims 4, 6, 7, and 22.

In regard to Claims 5 and 23, the Office Action has not properly identified teaching or suggestion of the fibers claimed in Claims 5 and 23. The Office Action states that it would have been obvious to select these materials on the basis of their suitability for the intended use, citing to *In re Leshin*. 125 U.S.P.Q. 416. The Applicants submit that the citation to *In re Leshin* is not relevant to the present application. In *re Leshin*, the court states "[m]ere selection of known plastics to make a container-dispenser of a type made of plastics prior to the invention, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious." *Id.* (pinpoint citation to 277 F.2d at 197). For *In re Leshin* to be relevant, the invention must be (1) a structure of the type known prior to the invention and (2) must be related to the selection of a particular known material from a class of materials from which the structure was previously known to be made. As discussed above, the Applicants submit that the Office Action has not shown that the structure of Claim 1, upon which Claim 5 depends, and the structure of Claim 21, upon which Claim 23 depends, was known prior to the invention. Therefore, *In re Leshin* is not relevant to Claims 5 and 23 and the Office Action's statement that it would have been obvious to select these materials on the basis of their suitability for the intended use is not a sufficient basis for stating a *prima facie* case of obviousness.

In regard to Claim 8, the Applicants submit that remarks in the Office Action are insufficient for establishing a *prima facie* case of obviousness against Claim 8. Citing *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955), the Office Action states that it would have been obvious to optimize the number of second regions per square centimeter. The Applicants submit that *In re Aller* is not applicable to the present case. In *re Aller*, the claims of the application were directed to a particular process performed within a range of temperature and range of acid concentration. The prior art disclosed a process performed at a particular temperature and a particular acid concentration. The ranges claimed in the application did not overlap with the conditions taught in the prior art. The court found that the ranges claimed in the application were

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obvious because the general conditions claimed were taught in the prior art and the application was directed to optimal or workable ranges. Claim 8 of the present application is directed to the number of second regions per square centimeter. Hansson, as cited in the Office Action, does not disclose the number of crests per centimeter. Thus, Hansson does not disclose the general conditions claimed in Claim 8. The subject matter of Claim 8 is not merely directed to the optimal or workable ranges of the conditions taught in Hansson and the citation to *In re Aller* is not relevant to Claim 8 of the present application. Therefore, the Applicant submits that the Office Action fails to establish a *prima facie* case of obviousness against Claim 8 of the present application.

For the reasons set forth above, the Applicants submit that Claims 4-8, 22, and 23 are allowable over Hansson. The Applicants respectfully request that Claims 4-8, 22, and 23 be allowed.

Double Patenting Rejections

As stated in the Reply After 1st Office Action filed December 22, 2005, Applicants agree to submit all necessary terminal disclaimers upon indication of allowable subject matter.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Signature

Gary J. Foote

Typed or Printed Name

Registration No. 58,896

(513) 634-3293

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(Amendment-Response to Office Action.doc)